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DEPARTMENT OF COMMERCE

International Trade Administration

[A-201-820]

Fresh Tomatoes from Mexico: Final Determination of Sales at Less Than Fair Value

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce

SUMMARY: The Department of Commerce (Commerce) determines that fresh tomatoes from Mexico are being, or are likely to be, sold in the United States at less than fair value (LTFV).

The final estimated weighted-average dumping margins are listed below in the “Final Determination” section of this notice.

DATES: Applicable [INSERT DATE OF PUBLICATION IN THE *FEDERAL REGISTER*.]

FOR FURTHER INFORMATION CONTACT: Yang Jin Chun or Hermes Pinilla, AD/CVD Operations, Office I, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482-5760 and (202) 482-3477, respectively.

SUPPLEMENTARY INFORMATION:

Background

On May 7, 2019, Commerce terminated the *2013 Suspension Agreement*¹ on fresh tomatoes from Mexico and continued the LTFV investigation of fresh tomatoes from Mexico.² The original period of investigation was March 1, 1995 through February 29, 1996. Due to the unusual procedural posture of this proceeding, in which we terminated a suspension agreement

¹ See *Fresh Tomatoes from Mexico: Suspension of Antidumping Investigation*, 78 FR 14967 (March 8, 2013) (*2013 Suspension Agreement*).

² See *Fresh Tomatoes from Mexico: Termination of Suspension Agreement, Rescission of Administrative Review, and Continuation of the Antidumping Duty Investigation*, 84 FR 20858 (May 13, 2019) (*Continuation Notice*).

and continued an investigation that covers a period of investigation that dates back more than 23 years, Commerce determined to request information corresponding to the most recent four full quarters, *i.e.*, April 1, 2018 through March 31, 2019.³ Based on the unusual procedural posture, we also found it appropriate to reconsider respondent selection.⁴ On May 24, 2019, we selected Bioparques de Occidente, S.A. de C.V. (Bioparques), Ceuta Produce, S.A. de C.V. (Ceuta), and Negocio Agrícola San Enrique, S.A. de C.V. (San Enrique) for individual examination in this continued investigation.⁵ On July 23, 2019, Commerce issued the post-preliminary decision based on the information requested from, and provided by, Bioparques, Ceuta, and San Enrique.⁶ Commerce received case and rebuttal briefs on August 30, 2019, and September 4, 2019, respectively.⁷

Continuation of Investigation

On September 19, 2019, Commerce and representatives of the signatory producers/exporters accounting for substantially all imports of fresh tomatoes from Mexico signed an agreement to suspend this investigation (the 2019 Agreement).⁸ On October 11, 2019, the Florida Tomato Exchange, a member of the U.S. petitioning industry, timely requested that Commerce continue this investigation.⁹ On October 15, 2019, Red Sun Farms also timely

³ *Id.*, 84 FR at 20860-61.

⁴ *Id.*, 84 FR at 20861.

⁵ See Memorandum, “Less-Than-Fair-Value Investigation of Fresh Tomatoes from Mexico: Respondent Selection,” dated May 24, 2019.

⁶ See Memorandum, “Post-Preliminary Decision Memorandum in the Less-Than-Fair-Value Investigation of Fresh Tomatoes from Mexico,” dated July 23, 2019 (Post-Preliminary Decision).

⁷ See Florida Tomato Exchange’s Case Brief dated August 30, 2019, the Mexican Respondents’ Case Brief dated August 30, 2019, Red Sun Farms’ Redacted Case Brief dated September 11, 2019, Florida Tomato Exchange’s Rebuttal Brief dated September 4, 2019, and the Mexican Respondents’ Rebuttal Brief dated September 4, 2019. Red Sun Farms submitted its original case brief on August 30, 2019, which we rejected on September 9, 2019, for containing untimely filed new factual information. See Commerce’s Letter to Red Sun Farms dated September 9, 2019. Red Sun Farms submitted its partially redacted case brief on September 11, 2019.

⁸ See *Fresh Tomatoes from Mexico: Suspension of Antidumping Duty Investigation*, 84 FR 49987 (September 24, 2019) (2019 Suspension Agreement).

⁹ See Florida Tomato Exchange’s Letter, “Fresh Tomatoes from Mexico: Request to Continue Suspended Less Than Fair Value Investigation,” dated October 11, 2019. Florida Tomato Exchange is a member of the petitioning group

requested that Commerce continue this investigation.¹⁰ Commerce has continued and completed this investigation in accordance with section 734(g) of the Tariff Act of 1930, as amended (the Act).

Scope of the Investigation

For a complete description of the scope of this investigation, *see* the “Scope of the Investigation” in Appendix I of this notice.

Scope Comments

In the post-preliminary decision, we addressed comments concerning the scope of this investigation.¹¹ No party filed comments in its case brief concerning the scope of the investigation. Therefore, we have made no changes to the scope of the investigation in the final determination.

Analysis of Comments Received

All issues raised in the case and rebuttal briefs by parties in this investigation are addressed in the Issues and Decision Memorandum, which is hereby adopted by this notice.¹² A list of the issues raised is attached to this notice as Appendix II. The Issues and Decision Memorandum is a public document and is on file electronically via Enforcement and Compliance’s Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at <https://access.trade.gov> and it is available to all parties in the Central Records Unit, room B-8024 of the main Commerce building. In addition, a complete version of the Issues and Decision Memorandum can be

that filed the petition in this investigation. *See Initiation of Antidumping Duty Investigation: Fresh Tomatoes from Mexico*, 61 FR 18377 (April 25, 1996).

¹⁰ *See* Red Sun Farms’ Letter, “Request to Continue Suspended Antidumping Duty Investigation,” dated October 15, 2019.

¹¹ *See* Post-Preliminary Decision at 4-5.

¹² *See* Memorandum, “Fresh Tomatoes from Mexico: Issues and Decision Memorandum for the Final Determination of Sales at the Less Than Fair Value,” dated concurrently with this notice (Issues and Decision Memorandum).

accessed directly at <http://enforcement.trade.gov/frn/index.html>. The signed Issues and Decision Memorandum and the electronic version are identical in content.

Verification

As provided in section 782(i) of the Act, in August 2019, Commerce verified the sales and cost data reported by Bioparques, Ceuta, and San Enrique. We used standard verification procedures, including an examination of relevant accounting and production records, and original source documents provided by the respondents.

Changes Since the Post-Preliminary Analysis

Based on the respondents' supplemental responses and revised sales and cost databases, our findings at verification, and our analysis of the comments received, we made certain changes to the margin calculations in the post-preliminary decision. For a discussion of these changes, *see* the Issues and Decision Memorandum. We have also revised the all-others rate.

All-Others Rate

Section 735(c)(5)(A) of the Act provides that Commerce estimate the weighted-average dumping margin for all other producers or exporters not subject to individual examination equal to the weighted average of the estimated weighted-average dumping margins of the individually examined respondents, excluding any rates that are zero, *de minimis*, or based entirely on facts available pursuant to section 776 of the Act. For purposes of this final determination, we are assigning 20.91 percent as the all-others rate, which is based on the weighted average of the estimated dumping margins calculated for the three individually examined respondents whose margins are above *de minimis* in the continued investigation.¹³

Final Determination

Commerce determines that the final weighted-average dumping margins are as follows:

¹³ *See* Memorandum, "Fresh Tomatoes from Mexico: Final All-Others Rate," dated concurrently with this notice.

Producer/Exporter	Weighted-Average Dumping Margin (Percent)
Bioparques de Occidente, S.A. de C.V./Agricola La Primavera, S.A. de C.V. ¹⁴	30.48
Ceuta Produce, S.A. de C.V./Rancho La Memoria, S. de R.L. de C.V. ¹⁵	3.91
Negocio Agricola San Enrique, S.A. de C.V.	17.02
All Others	20.91

Disclosure

We intend to disclose the calculations performed to interested parties within five days of the public announcement of this final determination consistent with 19 CFR 353.20(e) (1996).

Suspension of Liquidation

As noted above, on September 19, 2019, Commerce and representatives of the signatory producers/exporters accounting for substantially all imports of fresh tomatoes from Mexico signed the 2019 Agreement. Consistent with section 734(h)(3) of the Act, the suspension of liquidation ordered following the May 7, 2019 continuation of the investigation remained in effect.¹⁶ No interested party requested a review of the suspension of the investigation by the U.S. International Trade Commission (ITC) under section 734(h) of the Act. Therefore, in accordance with section 734(h)(3) of the Act, and because the 2019 Agreement remains in force, Commerce is instructing U.S. Customs and Border Protection to terminate the suspension of liquidation of all entries of fresh tomatoes from Mexico, entered, or withdrawn from warehouse,

¹⁴ In this investigation we have determined that Bioparques de Occidente, S.A. de C.V. and Agricola La Primavera, S.A. de C.V. are affiliated and should be treated as a single entity. *See* Issues and Decision Memorandum at 4-6.

¹⁵ In this investigation we have determined that Ceuta Produce, S.A. de C.V. and Rancho La Memoria, S. de R.L. de C.V. are affiliated and should be treated as a single entity. *See* Issues and Decision Memorandum at 4-6.

¹⁶ *See 2019 Suspension Agreement*, 84 FR at 49989 (“The suspension of liquidation ordered following the May 7, 2019 continuation of the investigation shall continue to be in effect, subject to section 734(h)(3) of the Act.”).

for consumption on or after May 7, 2019, and to liquidate the entries without regard to antidumping duties (*i.e.*, to refund any cash deposits and release any bonds for such entries).

International Trade Commission Notification

In accordance with section 735(d) of the Act, we will notify the ITC of the final affirmative determination of sales at LTFV. Because the final determination in this investigation is affirmative, in accordance with section 735(b)(2) of the Act, the ITC will make its final determination as to whether the domestic industry in the United States is materially injured, or threatened with material injury, by reason of imports of fresh tomatoes from Mexico no later than 45 days after our final determination. If the ITC determines that material injury or threat of material injury does not exist, the 2019 Agreement will have no force or effect, and the investigation will be terminated.¹⁷ If the ITC determines that material injury or threat of material injury does exist, the 2019 Agreement shall remain in force. Commerce will not issue an antidumping duty order so long as: (1) the 2019 Agreement remains in force; (2) the 2019 Agreement continues to meet the requirements of sections 734(c) and (d) of the Act; and (3) the parties to the 2019 Agreement carry out their obligations under the 2019 Agreement in accordance with its terms.¹⁸

Notification Regarding Administrative Protective Orders

This notice serves as a reminder to parties subject to an Administrative Protective Order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3).¹⁹ Timely notification of the return or

¹⁷ See section 734(f)(3)(A) of the Act.

¹⁸ See section 734(f)(3)(B) of the Act.

¹⁹ See *Continuation Notice*, 84 FR at 20861 (stating that the procedures in 19 CFR 351.305 apply to this continued investigation).

destruction of APO materials, or conversion to judicial protective order, is hereby requested.

Failure to comply with the regulations and the terms of an APO is a violation subject to sanction.

This determination and this notice are issued and published pursuant to sections 735(d) and 777(i)(1) of the Act.

Dated: October 21, 2019.

Jeffrey I. Kessler,
Assistant Secretary
for Enforcement and Compliance.

Appendix I

Scope of the Investigation

The merchandise subject to the investigation is all fresh or chilled tomatoes (fresh tomatoes) which have Mexico as their origin, except for those tomatoes which are for processing. For purposes of this suspended investigation, processing is defined to include preserving by any commercial process, such as canning, dehydrating, drying, or the addition of chemical substances, or converting the tomato product into juices, sauces, or purees. Fresh tomatoes that are imported for cutting up, not further processing (*e.g.*, tomatoes used in the preparation of fresh salsa or salad bars), are covered by the investigation.

Commercially grown tomatoes, both for the fresh market and for processing, are classified as *Lycopersicon esculentum*. Important commercial varieties of fresh tomatoes include common round, cherry, grape, plum, greenhouse, and pear tomatoes, all of which are covered by this investigation.

Tomatoes imported from Mexico covered by this investigation are classified under the following subheading of the Harmonized Tariff Schedule of the United States (HTSUS), according to the season of importation: 0702. Although the HTSUS numbers are provided for convenience and customs purposes, the written description of the scope of this investigation is dispositive.

Appendix II

List of Topics Discussed in the Issues and Decision Memorandum

- I. Summary
- II. Background
- III. Scope of the Investigation
- IV. Scope Comments
- V. Affiliation and Collapsing
- VI. Changes Since the Post-Preliminary Decision
- VII. Discussion of the Issues

A. Procedural Issues

Comment 1: Basis for the Continued Investigation

Comment 2: Respondent Selection

Comment 3: Due Process

B. General Calculation Issues

Comment 4: Time Period in the Differential Pricing Analysis

Comment 5: Comparison of U.S. Prices to Normal Values on a Monthly Basis

Comment 6: Product Matching by Tomato Type

C. Bioparques

Comment 7: Bioparques' High-Priced Home Market Sales

Comment 8: Offsets to La Primavera's General and Administrative Expenses

Comment 9: Packing Labor and Overhead Costs

Comment 10: Interest Income Offsets

Comment 11: Adjustment to Roma Production Quantities

D. Ceuta

Comment 12: Ceuta's Home Market and U.S. Sales Prices

Comment 13: Ceuta's Packing Cost Methodology

Comment 14: Ceuta's Missing U.S. Packing Costs

Comment 15: Ceuta's Home Market Discounts

E. San Enrique

Comment 16: San Enrique's Affiliation

Comment 17: San Enrique's U.S. Commission

Comment 18: San Enrique's Packing Costs

F. All-Others Rate and Cash Deposit Rate

Comment 19: All-Others Rate

Comment 20: Red Sun Farms' Cash Deposit Rate

VIII. Recommendation

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